

EXHIBIT 46

1
2 IN THE UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----)
5 In re)
6)Chapter 11
7 LEHMAN BROTHERS)Case No.
8 HOLDINGS INC., et al.,)08-13555 (JMP)
9 Debtors.) (Jointly Administered)
10 -----)
11
12 VIDEO DEPOSITION UPON ORAL EXAMINATION
13 of
14 JEREMY CLAY
15
16 On Tuesday, 9th July 2013
17
18 Taken at the offices of:
19 Mayer Brown International LLP,
20 201 Bishopsgate,
21 London EC2M 3AF,
22 England
23
24 Reported by: Richard Harper
25

JEREMY CLAY
I N D E X
Deponent Page
MR. JEREMY CLAY
Direct Examination by Mr. Meade 4
ReDirect Examination by Mr. McCarthy 68
Direct by Mr. Meade 69
ReDirect by Mr. Cohen 70

Exhibits marked during this deposition
Exhibit Page
97 49
98 63

1

3

7/9/2013 Clay, Jeremy

7/9/2013 Clay, Jeremy

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2 A P P E A R A N C E S
3
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10 BY: MR. KEVIN F. MEADE
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18 BY: MR. JOHN G. MCCARTHY
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20 On behalf of the witness:
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1 JEREMY CLAY
2 (The deposition commenced at 11.03 a.m.)
3 THE VIDEOGRAPHER: Here begins
4 video tape Number 1 in the deposition of Jeremy
5 Clay, in the matter of In Re: Lehman Brothers
6 Holdings Inc., et al, in the US Bankruptcy Court
7 Southern District of New York. Chapter 11 case
8 number 08-13555 (JMP). Today's date is July 9th
9 2013 and the time on the video monitor is 11.03
10 a.m. The video operator today is Linda Fleet of
11 Marten Walsh Cherer and this video deposition is
12 taking place at Mayer Brown International 201
13 Bishopsgate, London EC2M 3AF, United Kingdom.
14 Counsel, please voice identify yourselves and
15 state whom you represent.
16 MR. MEADE: Kevin Meade and Arielle
17 Gordon form Weil Gotshal & Manges, on behalf of
18 Lehman Brothers Holdings Inc, and we have some of
19 our colleagues from our Weil London office here as
20 well.
21 MR. COHEN: Marc Cohen and Tracey
22 Butcher for Mayer Brown International. We
23 represent Mr. Clay.
24 MR. MCCARTHY: John McCarthy of
25 Sullivan & Cromwell LLP on behalf of the Canary

2

4

JEREMY CLAY

JEREMY CLAY

That's what I said to Clifford Chance, in discussions with Clifford Chance.

BY MR. MEADE:

Q. All right. And, just so that the record is clear, in your answer you twice said, "We did not wish them to serve a notice requiring LBI", did you mean LBHI?

A. Sorry, LBHI, yes I do.

Q. And just so that it is clear and just so you don't have to keep repeating in your answer, understanding that you did not have correct communications with Canary Wharf itself ----

A. Sure.

Q. And when I refer to Canary Wharf, you understand I mean them or their counsel?

A. I understand.

Q. You testified that you told Canary Wharf's counsel that you did not wish them to serve a notice requiring LBHI to take a lease under this clause?

A. Following a forfeiture of the -- yes.

Q. Do you recall approximately when

given a view about service of notice under this clause at some point in, I think it was May 2010. That was -- I had no recollection of that until I had seen the e-mail yesterday.

Q. Just to follow up, what was communicated to Clifford Chance as to why JP Morgan did not want notice provided to LBHI under paragraph 7 of Schedule 4?

A. I indicated to Clifford Chance that we would not wish JP Morgan to be in a position where it was completing the acquisition of the building and there may exist at that time or subsequently a contractual arrangement between Canary Wharf and LBHI under which LBHI had an entitlement to take a lease of the building, as that would clearly create, in real estate terms, an issue for JP Morgan, who wanted to acquire the building with vacant possession to enable them to take over the building, fit it out and occupy it as their HQ, so that was the message we gave to Clifford Chance.

Q. And did you ever communicate with -- did you ever have any conversations with Clifford Chance as to whether JP Morgan would

17

19

7/9/2013 Clay, Jeremy

7/9/2013 Clay, Jeremy

JEREMY CLAY

JEREMY CLAY

that position was first communicated to Clifford Chance?

A. I think that would have been communicated around a week or so prior to closing, which would be around the December 12th or 13th. That was when this clause was -- we were discussing the clause in the SPA, which related to the claim, and that was the point at which this issue was discussed between myself and Clifford Chance.

Q. When was Mayer Brown retained to represent JP Morgan, approximately?

A. The beginning of 2010, February or March time, 2010.

Q. Okay. And now, were there any discussions with Clifford Chance concerning providing notice under this provision that you can recall prior to December 2010?

A. Prior to 2010?

Q. I am sorry, prior to December 2010?

A. Sorry. I couldn't recall any prior to December 2010, but yesterday I was shown an e-mail from Anita Jones to Clifford Chance which indicated we had made a commentary about, or had

complete the transaction if notice were provided to LBHI under this provision, which is paragraph 7 of Schedule 4?

A. No.

Q. No, or not that you can recall?

A. Not that I can recall. They, Clifford Chance, in response, put it to me that if a notice were served LBHI would not be in a position to comply with it, so that JP Morgan should be comfortable there wasn't a problem in a notice being served, and that we could live with a notice being served, whilst I -- and my response to that to Clifford Chance was whilst I accepted there was perhaps little risk of LBHI being able to take up a lease, to the extent there was any risk of that happening, I didn't think it was appropriate for JP Morgan to take up that risk. We would simply want to complete with a certainty that this notice had not been served and would not be served.

Q. Was it your -- did anyone from Clifford Chance represent to you that a notice would not be served on LBHI under this provision?

A. They ----

18

20

JEREMY CLAY

JEREMY CLAY

about your instructions.

BY MR. MEADE:

Q. Did you express your instructions to Canary Wharf?

A. In finalising this document we would have sought to document an arrangement which meant this transaction completed, in terms of both exchange of agreements and completion of transfer of -- and transfer of legal title on the same date, because that was the discussion that I believe we did have with Clifford Chance about how the deal should be closed. But that was as far as it would go.

Q. Just so I understand, when you say, the "arrangement which meant this transaction completed, in terms of both exchange of agreements and completion of legal title on the same day", is that what completion of the transaction will take place simultaneously ----

A. I believe it is, yes.

Q. Did you have any -- when you said, "that was the discussion we had with Clifford Chance about how the deal should be closed", did you have any discussions with Clifford Chance

should be confidential, and that was reflected in the MOU. I do not think there were specific discussions around Section 12, which would be a relatively normal consequence of an agreed condition of confidentiality provision arrangement.

Q. Okay. Was this provision in here -- sorry, was provision, paragraph 12, in the MOU at Canary Wharf's request?

A. I believe it was.

Q. Do you recall why?

MR. COHEN: Objection as to form. You say "why" meaning did Canary Wharf tell him why?

MR. MEADE: Does he know why Canary Wharf wanted this provision in the MOU.

MR. COHEN: Because they communicated -- he may have that heard from his client, so again I want to make sure we are sticking to the non-privileged area.

MR. MEADE: Let me ask the question again. I may be able to take care of this.

BY MR. MEADE:

Q. Other than communications with your

29

31

7/9/2013 Clay, Jeremy

7/9/2013 Clay, Jeremy

JEREMY CLAY

JEREMY CLAY

about why that was how the deal should be closed?

A. No.

Q. Do you recall having any discussions about the reason why JP Morgan wanted it closed -- why it wanted completion to take place simultaneously?

MR. COHEN: Discussions with Clifford Chance about the reason?

MR. MEADE: Yes.

MR. COHEN: (Unclear).

A. No.

BY MR. MEADE:

Q. Would you also look at paragraph 12. "No Disclosure of the Agreement For Lease". It states: "In order to preserve the confidentiality of the Agreement, the Buyer will agree not to apply to the Land Registry to note the Agreement on Canary Wharf's titles whether by way of an agreed or unilateral notice. Any breach by the Buyer will entitle the Seller to determine the agreement." Do you remember any discussion with Clifford Chance regarding this provision?

A. We had a discussion regarding the requirement of both parties that the transaction

client, do you know why Canary Wharf wanted this in the MOU?

MR. MCCARTHY: Objection to the form.

A. I believe, again, my recollection is they wanted it in simply to ensure confidentiality, which was the agreed principle.

BY MR. MEADE:

Q. Are you aware of whether -- sorry. Are you aware of any reasons why Canary Wharf did not believe that paragraph 11 was sufficient to satisfy their confidentiality concern?

MR. COHEN: Objection. Again, are you ----

MR. MEADE: Just so I understand. Are you taking the position that facts that Canary Wharf conveyed to JP Morgan that he is aware of are privileged?

MR. COHEN: You say facts. Communications between him and JP Morgan are privileged. You know, if they passed a writing that was from someone from Canary Wharf through JP Morgan to him I would say no, that's not privileged, but if someone is describing -- if his

30

32

JEREMY CLAY

JEREMY CLAY

12.19. It starts on the bottom of 18402 and continues for the next two pages?

A. No.

Q. I understand that you have not seen the e-mail. I am going to read a little of it, to give you context to the next question. If you could look at 18403, the second paragraph: "Your clients' request, for an acknowledgment of a valid claim of 262.5 million presents LBL and its administrators with a significant problem. Setting aside the fact that this claim was previously agreed at nil (after extensive negotiations) my clients struggle to see how they can acknowledge claims which are currently in the region of 35 million (representing accrued rent and estate charges) at a substantially higher sum." Then, if you can skip down five paragraphs, where it says: "We recognise that your clients..." Do you see where I am?

A. Yes.

Q. "We recognise that your clients wish to amend the deal with LBL in order to reach agreement with LBHI and in particular to be able to provide the requested stipulation numbered 2 in

clients and so if you cannot adopt it, it would be helpful to know why that is."

Okay, now do you recall any communications with Clifford Chance, in which you were informed that counsel for LBL had suggested that Canary Wharf should serve a notice on LBHI, under paragraph 7 of Schedule 4 of the LBL lease?

MR. MCCARTHY: Object to the form.

A. No.

BY MR. MEADE:

Q. So just to be clear, you also -- are you aware of any reason that would -- are you aware, from your communications with Clifford Chance, of any reason that may have been expressed to LBL as to why that could not be done?

A. I am sorry, can you repeat the question?

Q. From your communications with Clifford Chance, are you aware of any reason that Canary Wharf expressed to LBL as to why it could not provide such a notice?

A. No.

Q. The court reporter will be handing you in a moment a document that has just been

45

47

7/9/2013 Clay, Jeremy

7/9/2013 Clay, Jeremy

JEREMY CLAY

JEREMY CLAY

the draft agreement. However, and forgive us if this is something that you have previously debated and rejected, a different route occurs to us which will enable your clients to reach agreement with LBHI, but would not necessitate any claim against LBL. Our suggestion is as follows: your client now and/or in the future would be in a position to forfeit the Lease and on doing so would be required to require LBHI to enter into a new lease on the same terms. In the circumstances of Agreement 3 in the draft settlement with LBHI (namely that your client does not currently anticipate entering into a lease for all or substantially all of the premises within 12 months of the court ratifying the LBHI settlement) it appears to us that your client can make a claim against LBHI if it refuses to accept a new lease. We note that this independent right of your client against LBHI is not currently referred to in the draft Settlement Agreement with LBHI but it would seem to present a solution to the deadlock which your clients have reached. We hope that this suggestion would be regarded as helpful. It seems to resolve the tension between our respective

marked as exhibit 97. It is Bates stamped MB0001167. This is an e-mail from yourself to Tony Briam, dated Thursday December 2nd 2010, at 9.54 a.m.

(Exhibit JC 97 was marked for identification)

Q. Just take a look. Have you seen this before?

A. Yes.

Q. It says: "Tony, I refer to your call earlier in the week. As mentioned JPM wishes to simultaneously exchange and complete on December 16th." Do you recall, or do you remember any call with Mr. Briam that you would be referring to here, where it says: "Tony, I refer to our call earlier in the week."?

A. No. I mean, there were so many calls at this point.

Q. Then you wrote: "As mentioned JPM wishes to simultaneously exchange and complete on 16th December." Do you recall any discussions with Mr. Briam, or anybody else at Clifford Chance at about this time, as to why JP Morgan wanted to simultaneously exchange and complete on that date?

A. We would have explained that, I

46

48

JEREMY CLAY

JEREMY CLAY

think did explain to them, that JP Morgan wished to complete prior to the end of the year and, in essence, that meant before December 20, which is when things start closing down. So in terms of lawyers being around and people being there to complete, so we aimed for -- were looking for a date before then. The reason they wanted to complete then, and I communicated with Clifford Chance, was the wish that we would then be in a position to take possession of the building and commence the fit-out of the building early in the New Year. December 16 was picked, I believe, and we informed Clifford Chance, just in terms of availability of Bill Viets and availability of signatories for documents. It was a logistics -- driven by logistics.

Q. Did you ever communicate to Clifford Chance that, if the deal did not simultaneously exchange and complete by December 20th, that it would not be able to be completed in 2010?

A. No. This is a wished-for date rather than -- I didn't express it to Clifford Chance as being a cut-off.

Q. Do you see where it says: "The Seller shall use reasonable endeavours to satisfy the Conditions Precedent by 15th December 2010 (the 'Expiry Date')." Again, I apologise if this is what you just testified to, but do you recall any discussion regarding a date by which the transaction had to close -- strike that. Do you recall any discussion regarding what you would refer to as a cut-off date?

MR. COHEN: With Clifford Chance?

BY MR. MEADE:

Q. With Clifford Chance?

MR. COHEN: Discussion at any time?

MR. MEADE: Correct.

MR. COHEN: Okay.

BY MR. MEADE:

Q. At any time?

A. No, I don't believe we did have a discussion.

Q. Do you recall any discussion regarding the provision in the MOU we just read which refers to an expiry date, again with Canary Wharf, including its counsel?

A. No, I don't believe there was --

49

51

7/9/2013 Clay, Jeremy

7/9/2013 Clay, Jeremy

JEREMY CLAY

JEREMY CLAY

Q. Was there any communication with Clifford Chance that the deal had to close in 2010?

A. I believe I would have informed Clifford Chance that they needed to close in 2010 for the reason that JP Morgan needed to take possession at the start of 2011, in terms of their overall timing, for fitting out and taking occupation of the building.

Q. Was there any communication as to what would occur with respect to the deal if it could not close in 2010?

MR. COHEN: Asked and answered.

BY MR. MEADE:

Q. You can answer.

A. No, it was not expressed as, in some sense a cut-off, that the deal would not happen if it wasn't done in 2010. I don't think it was -- I don't believe I expressed it in those terms. It was simply the wished-for timetable.

Q. Briefly, if you can look back at the MOU, which is exhibit 26, I would like you to look at page 1550 again, paragraph 4.4?

A. Yes.

that we had any discussion with Clifford Chance about that date. It was ----

Q. You said "it was just", sorry, and then you ----

A. It was a date that we -- I can't really recall, to be frank. It was probably a date that we were given, but I don't think that there was any discussion with Clifford Chance about it.

Q. But you expressed to Clifford Chance that it was important for JP Morgan that the deal close in 2010?

MR. COHEN: Asked and answered.

A. Yes, certainly that, in the discussions as the deal progressed, and the timing was worked out for JP Morgan's move to the new building it became important that we closed in 2010 to meet that timetable.

BY MR. MEADE:

Q. You can -- exhibit 97, just keep it available. I may go back to it. I don't want you to have to rifle through the stack. I am handing you what has been previously marked exhibit 9. I will be asking you about two e-mails. For the

50

52

JEREMY CLAY

JEREMY CLAY

2010?

A. Well, I can't recall it, but it would appear from the e-mail that it must have been, yes. I cannot recall doing it, but in terms of the timing -- I can't recall the dates well enough but this suggests to me that we must have done it before this date, yes.

Q. When you say: "As I made clear on the telephone..." Do you recall having a phone conversation regarding the issue of -- that Canary Wharf was asking LBHI for confirmation as to whether it wanted to take a new lease ----

MR. COHEN: I am sorry, can you repeat ----

BY MR. MEADE:

Q. Yes. In your response, December 3rd 2010 ----

A. Yes.

Q. You said: "As I made clear on the telephone..." Do you remember having a telephone conversation about the issues being discussed in this e-mail?

A. Not specifically, no.

Q. Okay. Generally?

I believe I was responding to here was a suggestion that some e-mail confirmation would be obtained from LBHI, and I was expressing our position on the view to Clifford Chance that simply obtaining an e-mail from LBHI was not in itself going to be enough. It clearly would be possible for them to come back perhaps with something that was enough, but that -- at this stage, that appeared to be what I was being -- as my recollection is, that's what was being proposed, and I was saying that is not going to be enough.

Q. Did you inform them of what would be enough?

A. No.

Q. I will show you what has been previously marked as exhibit 15. For the record, this is the agreement relating to the grant of a lease of 25 Bank Street, Canary Wharf, London E14 5LE, Bates stamped CW 0005282. Have you seen this document before?

A. Yes.

Q. Now, the deal with -- the transaction between JP Morgan and Canary Wharf

57

59

7/9/2013 Clay, Jeremy

7/9/2013 Clay, Jeremy

JEREMY CLAY

JEREMY CLAY

A. Generally, my message would have been delivered -- that I was delivering to Clifford Chance was, "You must not serve a notice and if you do serve a notice and provide me with some confirmation from LBHI that it is not going to take up a new lease, that won't, in itself, be acceptable for me to recommend JP Morgan proceed to complete". That was a message I was giving to Clifford Chance and this e-mail is, in my view, confirming what I was saying on the telephone to Clifford Chance.

Q. Okay. So what this e-mail is say is if you get e-mail confirmation from -- just so I understand?

A. Yes.

Q. What this e-mail is saying is if you get e-mail confirmation from LBHI, or if you get confirmation however confirmation comes, that they don't want to take up a new lease, that will not be sufficient for JP Morgan if Canary Wharf has provided Lehman with notice under what you call the Lehman lease guarantee?

A. It is difficult for me to be absolutely -- to absolutely recall this. What

closed on December 20th?

A. I believe so.

Q. Is that correct?

A. I believe so.

Q. This is dated 20th December 2010, does that refresh your recollection?

A. Yes, it does.

Q. If you could take a look -- I just want you to look at two provisions. The first is on Bates stamp 5310, it is provision 7.16.4.

A. Yes.

Q. You can read that to yourself. The other provision which I am just going to be asking you about quickly is on 5319, it is 11.3.2.

A. Yes.

Q. When you said that the e-mail confirmation that was being proposed wouldn't be enough, is this what the parties agreed that would be enough, these provisions that were inserted into the final version of the SPA?

MR. COHEN: Objection as to form. You can answer, go ahead.

A. The discussions continued from -- through December to with Clifford Chance and, in

58

60

JEREMY CLAY

JEREMY CLAY

finalising the document, I reiterated the JP Morgan position that, in order that JP Morgan to close, we would need clear confirmation that no notice had been served and an express obligation not to serve a notice.

BY MR. MEADE:

Q. And?

A. I was not aware of any alternative solutions at that point, beyond the e-mails that you have just seen.

Q. Is the alternative solution e-mail confirmation from LBHI?

A. Yes, beyond that, that's ----

Q. When you say, "In order for JP Morgan to close we would need clear confirmation no notice had been served and an express obligation not to serve a notice."

A. Yes.

Q. Just so that I understand, is that what is being represented in 7.16.4 and 11.3.2?

A. Yes, I believe they achieved that.

Q. You have just been handed a document which is Bates stamped MB0000654. It has been marked as exhibit 98 in this case.

correct? Do you see that? She again follows up again on December 15th, it looks like, if I am reading it correctly, it looks like 12.36 in the morning?

A. All right.

Q. Was this when the transaction was winding down at that December 15th?

A. No, it was fully -- it was pushing to closing, so we were in the sort of period just prior to closing, so there was a lot going on at this point.

Q. This is my noncorporate lawyer understanding of deals. On December 15th at 9.06 a.m. you respond: "Tony, Justin can you confirm please asap as we need to confirm position to David and Bill re Lehman's." Just so I understand, can you explain why you were asking them to confirm that no notice or demand, under paragraph 7(b) of Schedule 4, had been served or would be served -- strike that. I might be able to make this easier. Were you simply seeking the confirmation that you expressed earlier, that the notice had not and would not be served?

MR. COHEN: Objection to form. Go

61

63

7/9/2013 Clay, Jeremy

JEREMY CLAY

(Exhibit JC 98 was marked for identification)

Q. This is an e-mail chain which starts off with an e-mail from Anita Jones to Justin Turner of Clifford Chance dated December 13th 2010, at 8.32 and continues on to an e-mail from Tony Briam to yourself, to Jeremy Clay, on Wednesday, December 15th at 9.35. Have you seen this e-mail chain before?

A. Yes, and I was shown this yesterday.

Q. In connection -- if you see in Ms. Jones' original e-mail, the initial e-mail in the chain, she says: "In relation to your deletion of clause 11.3.2 of the Main Spa of the reference to para 7(b) of schedule 4 to the Lehman Lease, can you please confirm as a reply to enquiry that no notice or demand under that paragraph has been nor will be served on LBHI prior to completion of the purchase by JPM." Do you see that?

A. Yes.

Q. Now, Ms. Jones follows up on December 14th, saying that you -- she had not yet received the confirmation that was being sought,

7/9/2013 Clay, Jeremy

JEREMY CLAY

ahead if you can.

A. There were two notices. There is the notice about taking up a lease, which is 7(a), and 7(b) is a different situation which is, if you do not require to serve a notice under 7(a), you can pursue rent. There is a claim that can be brought under 7(b) and basically, in diligence terms, I was wanting to know the position under 7(b), as to whether steps had been taken under 7(b). So it was in the nature of a diligence inquiry.

BY MR. MEADE:

Q. I am handing you what has been previously marked as exhibit 40. This is an e-mail chain, Bates stamped CW 0020707. I am going to be asking you a question about Ms. Jones' e-mail on December 3rd at 6.26p.m. It is on the bottom of 20708. I have a pretty specific question about the paragraph that starts: "I understand that you do not yet have instructions..." Do you see where I am referring to?

A. Yes.

Q. It states: "I understand that you

62

64

JEREMY CLAY

JEREMY CLAY

do not yet have instructions from Canary Wharf in relation to the proposed \$10 million(sic) loan from JPM to CW." -- Canary Wharf ----

MR. COHEN: Objection as to form.

" 10 million."

MR. MEADE: Pounds? Did I say dollars? Even better.

MR. COHEN: Yes.

BY MR. MEADE:

Q. "In relation to the proposed 10 million loan from JPM to CW. We will need to document this next week so if you could come in relation to this we can then progress this aspect." Do you recall a proposed \$10 million(sic) loan from JP Morgan to Canary Wharf?

A. I really do not, no.

MR. MEADE: If you give me five minutes we may be able to wrap up soon.

MR. COHEN: Sure.

(Off the record at 12.28)

(Back on the record at 12.41)

BY MR. MEADE:

Q. Mr. Clay, do you recall any

no further conversations about any other right or entitlement to take back the lease -- to take a lease.

BY MR. MEADE:

Q. Did you express to -- other than not serving the notice, did you ever express to Clifford Chance any concerns that JP Morgan had about LBHI's ability to try to take back the lease?

A. No.

MR. MEADE: I have no further questions.

65

67

7/9/2013 Clay, Jeremy

7/9/2013 Clay, Jeremy

JEREMY CLAY

JEREMY CLAY

conversations with Clifford Chance concerning whether LBHI would have the right to try to take back the lease after the transaction with JP Morgan closed?

MR. COHEN: Okay, just an objection here, conversations before the closing? Because after the closing we get into another potential privilege issue, as you know.

MR. MEADE: I understand.

MR. COHEN: I want to make sure what you are asking.

MR. MEADE: Okay.

BY MR. MEADE:

Q. Prior to the closing, do you recall any discussions between Mayer Brown and Clifford Chance concerning whether LBHI would have the right to try to take back the lease from JP Morgan?

MR. COHEN: Objection as to form. Go ahead.

A. Only in the context of the nonservice of the notice, i.e. on the basis they would not serve a notice, following closing we were -- that was our requirement, and there were

(DIRECT QUESTIONS BY MR. MCCARTHY)

MR. MCCARTHY: I have questions. Would you like me to put a Mike on?

MR. MEADE: Just yell really loud!

BY MR. MCCARTHY:

Q. Mr. Clay, you were shown earlier exhibit 9. Do you have that in front of you?

MR. MEADE: What is the date on that?

MR. MCCARTHY: 29713.

MR. MEADE: I had in mind the date.

MR. MCCARTHY: The date, I am sorry. The date in the top e-mail is 6th December.

BY MR. MCCARTHY:

Mr. Clay, you discussed with Mr. Meade e-mails at the end of this document from December 3rd. Do you remember that discussion?

A. Yes.

Q. Prior to the closing of the deal between JP Morgan and Canary Wharf, did you see any e-mails from LBHI or from its counsel indicating that LBHI would not take a lease?

MR. MEADE: Object to the form.

66

68

JEREMY CLAY

JEREMY CLAY

THE COURT REPORTER: I am sorry, I did not hear you. "Would not..."

MR. MCCARTHY: "...take a lease."

A. No.

BY MR. MCCARTHY:

Q. Did you see any e-mails at all from LBHI or from its counsel prior to the closing of the deal between JP Morgan and Canary Wharf?

A. I don't believe we did, no.

MR. MCCARTHY: Okay. That's all.

MR. MEADE: I just have one follow up question.

(FURTHER DIRECT BY MR. MEADE)

BY MR. MEADE:

Q. Regardless of whether you saw any e-mails between JP Morgan -- sorry, between counsel for LBHI and counsel for Canary Wharf, the position that you expressed was that e-mail confirmation from LBHI would be insufficient for you to recommend to your client that it proceed to completion of this transaction?

MR. MCCARTHY: Object to the form of the question.

A. Yes. In the discussions we had in relation to the SPA we were clear that what was important to JP Morgan was to be able to close, have vacant possession of the building, and be able to fit-out and occupy the building in accordance with its required timetable, and that what was not acceptable was the possibility of the creation of some contractual arrangement between Canary Wharf and LBHI which would give LBHI an entitlement to a lease of the building which could therefore, in some way, interfere with JP Morgan's occupancy post closing, or at all.

Q. Other than what you just said, was there any other reason that you articulated to Clifford Chance as to why you did not want notice served on LBHI?

A. No.

MR. COHEN: That's it for me.

MR. MEADE: No further questions.

THE VIDEOGRAPHER: Going off the record. The time is 12.47.

(Off the record at 12.47 p.m.)

(The deposition concluded at 12.47 p.m.)

69

71

7/9/2013 Clay, Jeremy

7/9/2013 Clay, Jeremy

JEREMY CLAY

A. I can't specifically recall that conversation, but that e-mail chain that you showed me indicates to me that that was the discussion I was having with Clifford Chance, and it was certainly consistent with discussions we had been having and with the e-mail, so that appears to me to be what we were doing, yes.

MR. MEADE: No further questions. Okay, are we off the record?

MR. COHEN: No, I have one question.

MR. MEADE: Do you want to go off first?

MR. COHEN: No.

MR. MEADE: I was going to say thank you.

MR. COHEN: You can say that on the record.

(REDIRECT BY MR. COHEN)

BY MR. COHEN:

Q. Mr. Clay, in your conversations with Clifford Chance, did you inform them why you were taking the position that you thought you did not want notice to be provided to LBHI?

CERTIFICATE OF WITNESS

I, JEREMY CLAY, am the witness in the foregoing statement under oath. I have read the foregoing statement and, having made such changes and corrections as I desired, I certify that the transcript is a true and accurate record of my responses to the questions put to me on Tuesday, 5th July 2013.

Signed

JEREMY CLAY

Dated this day of 2013

70

72